

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 THEODORE MICHAEL,

CV F 02 6227 LJO P

13 Plaintiff,

14 v.

ORDER DENYING MOTION TO REOPEN
TIME FOR FILING APPEAL (Doc. 93.)

15
16 RAYMOND ANDREWS, et. al.,

17 Defendants.
18 _____/

19 Theodore Michael ("Plaintiff") is a federal prisoner proceeding pro se and in forma
20 pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal
21 Bureau of Narcotics, 403 U.S. 388 (1971). Pursuant to Title 28 U.S.C. § 636(c)(1), the parties
22 have consented to the jurisdiction of the United States Magistrate Judge.

23 On February 7, 2005, Plaintiff filed a Motion for Summary Judgment. (Doc. 59.) The
24 Motion was denied by this Court on August 2, 2005. (Doc. 87.) Defendants filed their Motion
25 for Summary Judgment on February 18, 2005. (Doc. 66.) Defendants filed an Opposition to
26 Plaintiff's Motion for Summary Judgment on March 10, 2005. On April 27, 2005, Plaintiff filed
27 a Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment. (Doc. 85.)
28 Plaintiff filed his Opposition to Defendant's Motion for Summary Judgment on May 18, 2005.

1 The Court issued an Order granting Defendant's Motion for Summary Judgment on August 2,
2 2005. Judgment was entered on August 22, 2005.

3 On June 9, 2006, Plaintiff filed a Motion to reopen the time for filing an appeal. Plaintiff
4 states that he did not receive notice of the entry of judgment until May 22, 2006. Plaintiff states
5 that mail was returned to the Court but that he had not transferred to another institution until
6 October 5, 2005.

7 Pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure, the Court may
8 reopen the time to file an appeal for a period of 14 days, but only if *all* of the following
9 conditions are met:

10 (A) the court finds that the moving party did not receive notice under Federal Rule of
11 Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within
21 days after entry;

12 (B) the motion is filed within 180 days after the judgment or order is entered or within 7
13 days after the moving party receives notice under the Federal Rule of Civil Procedure
77(d) of the entry, whichever is earlier; and

14 (C) the court finds that no party would be prejudiced.

15 Fed.R.App.P. 4(a)(6).

16 In this case, Plaintiff states that he did not receive notice of the Judgment and Order until
17 May 22, 2006. (Motion at 1.) However, Plaintiff did not submit the instant motion until June 9,
18 2006, well beyond 180 days of judgment (making the deadline February 18, 2006) and beyond 7
19 days of when he received notice on May 22, 2006 (a deadline of May 29, 2006.) As Plaintiff has
20 failed to meet the condition required in subsection (B), the request to reopen the time for filing an
21 appeal is DENIED.

22 IT IS SO ORDERED.

23 **Dated: June 13, 2006**
24 b9ed48

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE